

### **Remarks**

Claims 10, 12-23, and 25-40 are currently pending in the Subject Application. Dependent Claim 24 has been cancelled without disclaimer or prejudice. Claims 27-40 are new. A Petition for a two-month extension of time is enclosed herewith.

### **Amendments to the Specification**

The Applicants have amended the Specification to address various typographical errors.

### **Drawing Objections**

The Examiner objected to the drawings and, more particularly, to Figs. 3A-3D and Figs. 6A-6C. During a telephone interview on April 7, 2008, the Examiner provisionally indicated that the drawing objections would be withdrawn in view of the Applicants' explanations provided during the interview, but asked that the Applicants respond to the drawing objections in writing. The Applicants would like to thank the Examiner for the interview and, as requested, respond as follows.

As previously discussed with the Examiner, Figs. 3A-3D and 6A-6C illustrate different various embodiments and, as a result, such embodiments may or may not have the same or similar components when one embodiment is compared to another. With this in mind, the Applicants respectfully submit that the referenced figures and accompanying description in the Specification provide a clear disclosure of the claimed invention of the Subject Application. By way of example, paragraph [0028] of the Subject Application outlines that "Fig. 3A shows the coupling of the gas or vapor permeable liquid impermeable barrier to the syringe or pipette. Fig. 3B illustrates how inserts 4 at the top of the pipette or syringe attach the gas or vapor permeable

liquid impermeable barrier to the pipette or syringe. Fig. 3C illustrates a holder 5 that holds the inserts in place. Fig. 3D shows the inserts and the coupling of the gas or vapor permeable liquid impermeable barrier.” Furthermore, referring to paragraph [0029], “Fig. 4 is an expanded view of Fig. 3C which shows a gas or vapor permeable liquid impermeable barrier 1, an insert 4, and a holder 5.” Additionally, paragraph [0031] recites, among other things, that “Figs. 6A and 6B show embodiments of the liquid delivery apparatus with all chemicals in one chamber. Fig. 6C shows a two chambered embodiment of the liquid delivery apparatus.” It is important to note that Figs. 6A-6C show “embodiments” wherein such embodiments may or may not include the features of Figs. 3A-3C, and 4. For example, paragraph [0041] states that the coupling device, insert, and holder illustrated in Figs. 3A-3D are, for the most part, selectable features and, as a result, Applicants respectfully submit that such features, among others, may be selectively illustrated with the exemplary embodiments of the Subject Application. Even still, similar components can be readily recognized between the embodiments of Figs. 3C, 4, and 6A, for example. More particularly, Figs. 3C and 4 illustrate a pipette or syringe 6 and including an insert 1 and a plunger 3. By way of comparison, Figs. 6A and 6B illustrate a syringe 6 which also includes an insert 1 and a plunger 3. While such embodiments may further include different and/or additional components, Applicants respectfully submit that the selective illustration of these components is permissible as such embodiments are, in fact, different as provided in the Subject Application.

### **Non-Statutory Double Patenting**

Claims 10 and 12-26 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-47 of U.S. Patent No. 6,360,595 to Lin et al. Applicants respectfully request that these rejections be stayed until a final disposition of the claims has been made in the Subject Application as the issue of double patenting cannot be fully addressed until that time.

### **Claim Rejections – 35 U.S.C §103(a)**

The Office Action rejects Claims 10 and 12-26 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,171,537 to Wainwright et al. (“Wainwright ‘537”) in view of U.S. Patent No. 6,045,757 to Moriarty et al. (“Moriarty ‘757”).

Independent Claim 10, as amended, recites a device for testing the level of an analyte comprising a first barrel having a proximal end and a distal end, a gas or vapor permeable but liquid impermeable barrier situated in the first barrel between the proximal end and the distal end, wherein liquid can be filled up to the barrier, a retainer on the distal end, wherein *the retainer comprises a valve*, and at least one chemical reactive in the first barrel between the retainer and the barrier.

Neither Wainwright ‘537 nor Moriarty ‘757 discloses or suggests a retainer on a distal end of a first barrel, wherein *the retainer comprises a valve*. The Applicants note that similar recitations have received favorable treatment in related applications to the Subject Application, such as in Independent Claim 1 of U.S. Patent No. 6,360,595, for example. The Applicants would also like to respectfully remind the Examiner that “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d

1382, 1385, 165 U.S.P.Q. 494, 496 (CCPA 1970), *see also*, MPEP §2143.03. For the reasons advanced above, the Applicants respectfully request allowance of Independent Claim 10 and the claims depending therefrom.

#### **New Independent Claims 27, 30, 35, and 40**

New Independent Claims 27, 30, 35, and 40 are directed to features which are not disclosed or suggested by any of the references cited in the Office Action. Further, various recitations within, or similar to those within, Independent Claims 27, 30, 35, and 40 have received favorable treatment in related applications to the Subject Application, such as U.S. Patent Nos. 6,360,595, 6,629,468, and 7,073,401, for example. Such recitations, especially in combination with other recited elements therein, define patentable claims over the art of record. Therefore, the Applicants respectfully request allowance of New Independent Claims 27, 30, 35, and 40 and the claims depending therefrom.

#### **Status of Other Cases**

Application No. 09/810,875, now U.S. Patent No. 6,360,595, received a Notice of Allowance dated November 23, 2001.

Application No. 10/042,906, now U.S. Patent No. 6,629,468, received a Notice of Allowance dated April 7, 2003.

Application No. 10/448,554, now U.S. Patent No. 7,073,401, received a Notice of Allowance dated December 21, 2005.

Application No. 11/394,049, filed on March 30, 2006, is currently pending and received a final Office Action dated April 23, 2008. Applicants have not yet responded to the final Office Action.

## **Conclusion**

Applicants respectfully submit that all of the claims presented in the Subject Application are in condition for allowance. Applicants' present Amendment should not in any way be taken as acquiescence to any of the specific assertions, statements, etc., presented in the Office Action not explicitly addressed herein. Applicants reserve the right to specifically address all such assertions and statements in subsequent responses. If the Examiner has any remaining concerns, the Examiner is invited to contact the undersigned at the telephone number set forth below so that such concerns may be expeditiously addressed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris M. Best", is written over a horizontal line.

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